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8 UNITED STATES DISTRICT COURT FOR THE
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,)
12 Plaintiff,)
13 v.)
14 PRISCILLA HUNTER, MICHELLE)
CAMPBELL, IRIS MARTINEZ, MICHAEL)
15 HUNTER, DARLENE CRABTREE, ALLAN)
CRABTREE, FRED NAREDO, and)
16 KATHY REDHORSE-STALLWORTH,)
17 Defendants.)

Criminal No. CR-06-0565-SI

UNITED STATES' RESPONSE TO
DEFENDANT DARLENE
CRABTREE'S MOTION TO
DISMISS INDICTMENT

DATE: NOVEMBER 9, 2007
TIME: 11:00 A.M.

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19 I. INTRODUCTION

20 On October 2, 2007, defendant Darlene Crabtree filed a motion to dismiss the indictment
21 against her because (1) a political contribution is not a "charitable gift" and (2) construing the
22 term "charitable gift" to include a "political contribution" would make the term too vague to
23 support criminal prosecution and contravene well-settled principles of statutory construction, all
24 in violation of the due process. Defendant Darlene Crabtree is charged in Counts Eighteen,
25 Twenty-Two and Twenty-Five of the superseding indictment..

26 On October 10, 2007, defendant Priscilla Hunter joined in Darlene Crabtree's motion to
27 dismiss seeking the dismissal of Counts Eighteen and Twenty-One as to her.

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1 On October 10, 2007, defendant Michelle Campbell joined in Darlene Crabtree's motion
2 to dismiss the indictment.

3 On October 11, 2007, defendant Allan Crabtree joined in Darlene Crabtree's motion to
4 dismiss the indictment.

5 II. THE SUPERSEDING INDICTMENT

6 In Count Eighteen, Prescilla Hunter, Michelle Campbell, Iris Martínez, Michael Hunter,
7 Darlene Crabtree, Allan Cratree and Fred Naredo, Sr. were charged with conspiracy to misapply
8 casino funds, in violation of 18 U.S.C. § 371, by willful misapplication of funds in excess of
9 \$1,000 belonging to a gaming establishment on Indian lands, in violation of 18 U.S.C. § 1167(b).
10 The indictment alleges that the defendants conspired to misapply and take funds belonging to the
11 Casino by improperly using Casino funds to make contributions to several federal and California
12 politicians and political organizations. In paragraph 28, the superseding indictment lists overt
13 acts allegedly committed by the defendants.

14 In Counts Nineteen through Twenty-Five, the superseding indictment charges substantive
15 counts of willful misapplication of casino funds, in violation of 18 U.S.C. § 1167(b). Count
16 Twenty-Two charges that Darlene Crabtree and Fred Naredo. Sr., on or about August 23, 2002,
17 signed a \$5,000 check drawn on the Casino's general account and made payable to "[State
18 Politician A] Committee" Count Twenty-Five charges that Darlene Crabtree and Michelle
19 Campbell, on or about March 17, 2004, signed a \$3,800 check drawn on the Casino's general
20 account and made payable to "[State Politician D] 2004." Count Twenty-One charges that
21 Priscilla Hunter, on or about August 12, 2002, signed a "[Friends of Congressperson B]
22 Contribution Response Form" regarding the \$1,000 contribution made on June 20, 2002, as set
23 forth in Count Twenty.

24 III. ARGUMENT

25 The defendants move to dismiss Counts Eighteen, Twenty-One, Twenty-Two and
26 Twenty-Five because (1) a political contribution is not a "charitable gift" and (2) construing the
27 term "charitable gift" to include a "political contribution" would make the term too vague to
28 support criminal prosecution and contravene well-settled principles of statutory construction, all

1 in violation of the due process.

2 The elements of the offense of willful misapplication of casino funds are: (1) the
3 defendant abstracted, purloined, willfully misapplied or carried away with the intent to steal;
4 (2) money, funds or other property of a value in excess of \$1,000; (3) belonging to a gaming
5 establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or
6 resolution approved by the National Indian Gaming Commission. 18 U.S.C. § 1167(b).

7 As alleged in the superseding indictment, at all relevant times the Tribe's use of revenue
8 generated by the Casino was governed by 25 U.S.C. § 2710, 25 C.F.R. § 522.41(b)(2), and by the
9 Gaming Ordinance approved by the National Indian Gaming Commission. (Sup. Indictment ¶¶ 4
10 and 5). Under Section 2710 and the NIGC regulations, net revenues from any tribal gaming are
11 *not to be used for purposes other than*: (1) to fund tribal government operations or programs; (2)
12 to provide for the general welfare of the tribe and its members; (3) to promote tribal economic
13 development; (4) to donate to charitable organizations; and (5) to help fund operations of local
14 government agencies. 18 U.S.C. § 2710(b)(2)(B)(i)-(v); 25 C.F.R. § 522.4(b)(2). Political
15 contributions are not a permissible use of net gaming revenues under federal law. As the
16 superseding indictment further alleges, the May 2001 Settlement Agreement between the NIGC
17 and the Tribe specifically provided that "[n]o charitable gifts or *other gifts* shall be made by the
18 Casino." That Settlement Agreement also specifies the limited uses of net gaming revenues
19 specified in the statute and the NIGC regulations. (Defendant Darlene Crabtree's Motion to
20 Dismiss, Exhibit A at p.2) Thus, the defendants knew that they were not authorized to make gifts
21 or contributions to politicians.

22 The defendants attempt to confuse the issue by construing the indictment as charging the
23 defendants with making "charitable gifts" in violation of the Settlement Agreement and treating
24 the political contributions as charitable gifts. The indictment does not do that.

25 Since political contributions are not a permissible use of net gaming revenues and the
26 Settlement Agreement made it clear that such "other gifts" were prohibited, the defendants were
27 not "left guessing about what is prohibited and what is not." See *Free Speech Coalition v. Reno*,
28 198 F.3d 1083, 1095 (9th Cir. 1999). Nor can it be said that the defendants are being "held

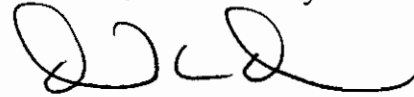
1 criminally responsible for conduct which [they] could not reasonably understand to be
2 proscribed.” See *Bouie v. Columbia*, 378 U.S. 347, 351 (1964). Finally, since the actions for
3 which the defendants have been charged are plainly and unmistakably proscribed, the rule of
4 lenity is inapplicable. *Dunn v. United States*, 442 U.S. 100, 112-13 (1979).

5 IV. CONCLUSION

6 For the foregoing reasons, the defendants’ motion to dismiss Counts Eighteen, Twenty-
7 One, Twenty-Two and Twenty-Five of the superseding indictment should be denied.

8 Respectfully submitted,

9 SCOTT N. SCHOOLS
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11 DAVID L. DENIER
12 Assistant United States Attorney
13 Tax Division

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